

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES AND CLERK OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA.

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1332, 1441, and 1446, removing party WAL-MART TRANSPORTATION, LLC (“Wal-Mart”), by counsel, hereby files this Notice of Removal to remove the above-entitled action to this Court based upon the following supporting grounds. Removing party Wal-Mart, appearing solely for the purpose of this removal, and for no other purpose, and preserving all other defenses available to it, states as follows:

VENUE

1. Removal to the Northern District of Indiana, Hammond Division, is appropriate pursuant to 28 U.S.C. § 1441(a), because the Northern District of Indiana, Hammond Division, embraces the County of Lake, where the action was pending prior to the filing of this Notice of Removal.

REMOVAL IS TIMELY

2. On October 27, 2020 removing party Wal-Mart was served by certified mail with a Summons and Complaint in the above-entitled action at the offices of its registered agent for

service of process in Indiana, CT Corporation System. Therefore, removal is timely under 28 U.S.C. § 1446(b)(1).

STATE COURT PROCEEDINGS

3. On October 16, 2020 Plaintiff Rene Reyna (hereinafter “Plaintiff”) filed his Complaint in the above-entitled action against Defendants Andrew Zabala, Walmart Transportation, LLC, and Walmart, Inc. a/k/a Wal-Mart Stores, Inc. in the Lake County Superior Court in the State of Indiana, Cause No. 45D02-2010-CT-001024, and is now pending therein.

4. Plaintiff filed his Complaint on or about October 16, 2020.

5. On or about November 3, 2020, Wal-Mart filed an Attorney Appearance, Jury Demand and Motion for Enlargement of Time to File Responsive Pleading in the Lake County Superior Court in the above-entitled action.

6. On or about November 4, 2020, the Lake County Superior Court issued an Order Granting Wal-Mart’s Motion for Enlargement of Time to File Responsive Pleading.

7. On or about November 24, 2020, the parties filed a Stipulation of Partial Dismissal as to Defendant WALMART INC. a/k/a WAL-MART STORES INC.

8. On or about November 25, 2020 the Lake County Superior Court issued an Order Granting the Stipulation of Partial Dismissal, dismissing defendant WALMART INC. a/k/a WAL-MART STORES INC.

9. No further proceedings have been had in the Lake County Superior Court.

10. Walmart asserts that there are no state court motions that remain pending at the time of this Notice of Removal.

DIVERSITY JURISDICTION EXISTS

11. This is a civil action that falls within the Court's original jurisdiction under 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship under 28 U.S.C. §§ 1441 and 1446.

12. Plaintiff is a citizen of the State of Indiana.

13. Defendant, Andrew Zabala, is a citizen of the State of Illinois.

14. Wal-Mart Transportation, LLC, a Delaware corporation. The principal place of business for Walmart is Bentonville, Arkansas. Thus, for purposes of diversity jurisdiction, Walmart is a citizen of Delaware and Arkansas, and not of Indiana.

a) The sole member of Wal-Mart Transportation, LLC is Wal-Mart Stores East, LP which was incorporated in and is a Delaware limited-partnership with its principle place of business in Arkansas;

b) The general partner of Wal-Mart Stores East, LP is WSE Management, LLC which was incorporated in and is a Delaware limited-liability company with its principle place of business in Arkansas and the limited partner of Wal-Mart Stores East, LP is WSE Investment, LLC which was incorporated in and is a Delaware limited-liability company with its principle place of business in Arkansas;

c) The sole member of WSE Management, LLC and the sole member of WSE Investment, LLC is Wal-Mart Stores East, LLC, which was incorporated in and is an Arkansas limited-liability company with its principle place of business in Arkansas; and

d) The sole member of Wal-Mart Stores East, LLC is Walmart, Inc. which was incorporated and is a Delaware corporation with its principle place of business in Arkansas.

15. There is complete diversity of citizenship between the parties named in this case.

16. Plaintiff's Complaint does not demand a specific sum of monetary damages. The State of Indiana does not permit a demand for a specific sum. Therefore, this Notice of Removal states that the monetary value of the amount in controversy exceeds \$75,000, exclusive of interest and costs, based upon the following:

- a. Plaintiff sustained injuries as an alleged result of the incident forming the basis of his Complaint.
- b. Plaintiff alleges said injuries are permanent.
- c. Plaintiff has demanded over \$75,000 to settle, and counsel has conveyed his belief that the case's value will exceed that amount if the parties are to continue litigation.

17. Based upon the injuries and damages alleged, Plaintiff seeks recovery in excess of \$75,000 exclusive of interest and costs, the value to Plaintiff of the relief sought in the Complaint exceeds \$75,000 exclusive of interest and costs, and/or the amount in controversy exceeds \$75,000 exclusive of interest and costs.

18. Therefore, this state court action is properly removed to this Court in accordance with 28 U.S.C. §§ 1441 and 1446 because: (1) this action is a civil action pending within the jurisdiction of the United States District Court for the Northern District of Indiana, Hammond Division; (2) this action is between citizens of different States; (3) the amount in controversy exceeds \$75,000 exclusive of interest and costs.

STATUTORY REQUIREMENTS

19. Pursuant to 28 U.S.C. § 1446(a), a copy of the entire state court file is attached as an Exhibit and includes the State Court Record as of the date of this Notice of Removal,

including the following: Plaintiff's Appearance, Complaint, Summons, Certificate of Service, Defendants' Appearance, Motion for Enlargement of Time, Jury Demand, Order, Stipulation of Partial Dismissal and Order.

20. A copy of this Notice of Removal has been filed in the Lake County Superior Court and Plaintiff has been served with both this Notice of Removal and the Notice of Filing Notice of Removal.

WHEREFORE, removing party WAL-MART TRANSPORTATION, LLC, by counsel, respectfully requests that the above-entitled action be removed from the Lake County Superior Court to the United States District Court for the Northern District of Indiana, Hammond Division

LEWIS WAGNER, LLP

By: s/Lesley A. Pfleging
LESLEY A. PFLEGING, #26857-49A
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2020, a copy of the foregoing Notice of Removal was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

Michael D. Dobosz
HILBRICH CUNNINGHAM DOBOSZ
VINOVICH & SANDOVAL, LLP
2637 45th Street
Highland, IN 46322
mdd@hilbrich.com
Counsel for Plaintiff

/s/*Lesley A. Pfleging*
LESLEY A. PFLEGING

LEWIS WAGNER, LLP
Suite 200
501 Indiana Avenue
Indianapolis, IN 46202
Telephone: 317-237-0500
Facsimile: 317-630-2790
lpfleging@lewiswagner.com